IN THE HIGH COURT OF BOMBAY AT GOA

CRIMINAL MISCELLANEOUS APPLICATION NO. 4 OF 2007

Shri N. N. Gaunekar,
Chartered Accountant
By profession,
Having his office at
Govinda Building,
Panaji-Goa. ... Applicant

versus

1. Mr. Suresh Prabhu
   B-21 Sadhana, 16th road,
   Khar, Mumbai 400 052.
   (Accused No.1 discharged)

2. Mr. Nandan Gadgil,
   B-6/6, Safdarjung Enclave,
   New Delhi 110 029.

3. Mr. Brij Bhushan Nagpal,
   B-6/6/Safdarjung Enclave,
   New Delhi 110 029.

4. Mr. Youguesh Kumar Ginani,
   A/302, New Gumkahra Apartment,
   Veera Desai Road,
   Andheri(West)
   Mumbai 400 058.

5. Mr. Vishesh Kumar Malvan,
   A/302, New Gumkahra Apartment,
   Veera Desai Road,
   Andheri(West)
   Mumbai 400 058.

6. Mr. Rajpal Singh.

7. Mr. Sanjay Calate
Both C/O Western India
Financial Service Ltd.,
J. P. Road, Opp. Andheri
Gate Complex, Andheri(E),
Mumbai.

8. M/s Western Indian Financial
Services Ltd., through its
Director/Company Secretary,
117/118, Maker Chamber V,
Jamnatal Bajaj Marg,
Nariman Point, Mumbai 400 021.

9. Mr. Nandan Prabhu Desai,
Akash Bhuvan, Near Matias
Plaza, Panaji-Goa. ... Respondents

Mr. A. N. S. Nadkarni and Mr. P. A. Kamat, Advocates for the Applicant.

Mr. I. Agha, Advocate for the Respondent No.9.

CORAM : N. A. BRITTO, J.

DATE : 31ST JANUARY, 2007.

ORAL ORDER

This is complainant's application for special leave to appeal against the acquittal of the accused under Section 138 of

the Negotiable Instruments Act, 1881(Act, for short) arising from C.C.No.36/0A/1997/D.

2. Heard Mr. A. N. S. Nadkarni, the learned Counsel on behalf of the applicant/complainant and Mr. I. Agha, the learned Counsel on behalf of A-9(respondent no.9).

3. The complainant prosecuted the respondents/accused for dishonour of cheque in the sum of Rs.1,00,000/-. Apparently, the said cheque was issued towards payment of the money invested by the complainant with accused no.8 i.e. M/s. Western Indian Financial Services Ltd. As per the complainant, A-1 was the Managing Director and A-2 to A-7 were the Directors of the said Company/A-8 and the accused no.9 was the authorized signatory who had signed the cheque on behalf of the said Company/A-8.

4. After filing of the complaint, A-1, the Managing Director came to be discharged and likewise A-2 to A-7 came to be dropped after an application was filed to that effect by the complainant. The case proceeded in terms of Section 299 Cr.P.C.

against A-8. The Judgment of acquittal dated 25-11-2005 is silent as regards A-8 i.e. M/s. Western Indian Financial Services Ltd. and to that extent leave can be granted and the Judgment dated 25-11-2005 could be set aside. Accordingly, the Judgment of the learned Magistrate dated 25-11-2005 as far as A-8, the Company is concerned is hereby set aside and the learned Magistrate is directed to deal with A-8, the Company, in accordance with law in the light of evidence produced by the parties.

5. As far as the acquittal of A-9 is concerned, the conclusion arrived at by the learned Magistrate could not be faulted. A-9 stepped in the witness box and gave his evidence and produced documents. Amongst the documents produced by A-9 was Exh.31 which showed that by letter dated 7-6-1995, A-9 was appointed as a Management Trainee on probation for a period of 9 months and during the said period his employment could be brought to an end by either side by giving 7 days notice. The accused also produced Exh.32, a letter dated 8-8-1995 by which he was required to report to the Companies' Manager, Goa Branch by name Shantaram N. Naik. A-9 also

produced Exh.33 dated 22-7-1996 informing A-8 that he would be resigning from the post w.e.f. 12-8-1996. Learned Counsel contends that A-9 would not have received the notice in the Office of the Company/A-8 in case he was not in the employment of the said Company/A-8. This submission of the learned Counsel on behalf of the complainant, has also been taken care of by the learned Magistrate, by observing that the AD card in relation to the said notice was not received by A-9 personally but by one Parigali. Prior to the accused giving his own evidence, it was suggested to the complainant, in cross-examination that A-9 was not the Manager of the Company/A-8 and all that the complainant replied was that the same was not his concern. In other words, A-9 had consistently taken the stand that he had resigned from the Company/A-8 w.e.f. 12-7-1996. Learned Counsel on behalf of the complainant submits that A-9 has not produced any letter showing that he was relieved by the Company/A-8 and has not examined any other person to prove the fact of his resignation. In my view, the evidence of A-9 coupled with the documents produced by him was sufficient to come to the conclusion that on the date of the commission of offence i.e. on the date of failure to comply with the statutory

notice dated 10-12-1996, A-9 was not an employee of the Company at whose behalf he had issued the said cheque. An accused is required to prove a fact in a criminal case by balance of probabilities and the evidence led by him was more than sufficient to conclude that he had ceased to be in the employment of the Company/A-8. In my view, A-9 who was otherwise a signatory to the cheque at the time when the cheque was issued, he could not be held liable under Section 138 of the Act, since he was not in the employment of the said Company/A-8 and was not required to comply with the statutory notice.

6. The conclusion arrived at by the learned Magistrate in acquitting A-9 could not be faulted. As far as A-9 is concerned, this is not a fit case for grant of leave to appeal. Consequently, the application for special leave to appeal as against A-9 shall stand rejected.

7. The learned Magistrate to proceed against A-8 in the light of what has been stated herein above. The proceedings

against A-8 be completed within a period of 30 days from the date of receipt of this order.

N. A. BRITTO, J.

RD